



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,173	09/08/2003	Shunsuke Hijikata	61355-046	9940

7590 08/23/2006
McDERMOTT, WILL & EMERY
600 13 th Street, N.W.
Washington, DC 20005-3096

EXAMINER

TO, TUAN C

ART UNIT	PAPER NUMBER
----------	--------------

3663

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,173

Applicant(s)

HIJIKATA, SHUNSUKE

Examiner

Tuan C. To

Art Unit

3663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 16-18 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 13 and 19 is/are rejected.
- 7) ☒ Claim(s) 5-12, 14 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>050505, 051304</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's election of claims 1-15, and 19 upon the elected Group I, Species A in the reply filed on 05/24/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Allowable Subject Matter

The indicated allowability of claim 4 is withdrawn since the cited reference has been found still read on the limitation as claimed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 2, 4, 13, and 19 are rejected under 35 U.S.C. 102(a) as being anticipated by Kojima et al. (US 6542793B2).

With respect to claims 1 and 19, Kojima et al. basically disclose a pedal apparatus for vehicles, comprising:

Art Unit: 3663

a. "a traveling condition recognition device that detects a state of the vehicle and a traveling environment of the vehicle" as claimed. In figure 25 of Kojima et al., there is shown a speed setting switch (41) for detecting a state of the vehicle, which is meant whether the vehicle is operating under cruise control. Also, there is shown sensor devices for detecting the distance between driver's vehicle and vehicle in front and relative speed. Thus, Kojima et al. also teach the device for detecting a traveling environment of the vehicle.

b. "a risk potential calculation device that calculates a risk potential present around the vehicle based upon detection results obtained by the traveling condition recognition device" as claimed. As clearly shown in figure 25, the risk potential calculation device (38) is the claimed potential calculation device, wherein the device (38) generates output signal based on the input signal from the speed setting switch (41) and sensor device as discussed above.

c. "a reaction force adjustment device that adjusts reaction force characteristics of a vehicle operating device based upon the risk potential calculated by the risk potential calculation device" as claimed (Kojima et al, abstract; column 15, lines 38-67).

d. "an external influence detection device that detects an external influence which will affect an operation of the vehicle operating device by a driver" (Kojima et al., figure 25, sensor device for detecting distance between driver's vehicle and vehicle in front).

e. "a reaction force correction device that reaction force characteristics of the vehicle corrects the operating device adjusted by the reaction force

Art Unit: 3663

adjustment device, based upon detection results obtained by the external influence detection device" as claimed. The pedal apparatus as taught by Kojima et al. comprises a pedal reaction-force addition means (4) which is provided for correcting the reaction force that is adjusted by the reaction force adjustment device (3) (Kojima et al, figure 25), based upon the detection results obtained by the external influence detection device which is the sensor device for detecting distance between driver's vehicle and vehicle in front.

The statements of intended use or field of use, "that detects...", "that calculates...", "that adjusts...", "that corrects..." clauses are essentially method limitations or statements of intended or desired use. Thus, the claim as well as the statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 512 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

With regard to claim 2, the reaction-force control means (3) (Kojima et al, figure 24) adjusts the reaction force of the accelerator pedal (1).

With regard to claim 4, Kojima et al. teaches a reaction force adjustment device (Kojima et al, abstract; column 15, lines 38-67), an external influence detection device (Kojima et al., figure 25, sensor device for detecting distance between driver's vehicle and vehicle in front), and a reaction force correction device (Kojima et al, figure 25).

With regard to claim 13, Kojima et al. pedal apparatus comprises the speed setting switch for inputting a speed signal based upon the driver's perception.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kojima et al. and in view of Kai (US 6226571B1).

Art Unit: 3663

As represented herein above, the reference to Kojima et al. teaches the reaction-force adjustment device (3) for adjusting the reaction force of the accelerator pedal (1). The reaction-force addition means (4) is the claimed reaction force correction device since it corrects the reaction-force based on the input signal from sensor device (S, Vr) and the speed setting switch (41).

Kojima et al. do not disclose a detection device for detecting a state of inclination.

The reference to Kai has been provided as teaching a typical driving assist system for vehicle, including a radar head (1) for detecting a state of inclination of lane in front of the driver's vehicle (Kai, abstract, figures 11 and 12).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Kojima et al. to include the teaching of radar head as taught by Kai to gain advantage therefore (ie, the acceleration of the vehicle is automatically reduced when the road ahead whose its direction is becoming to change).

Allowable Subject Matter

After carefully performing the prior art search, none of the references have been found fairly suggests the subject matter as recited in claims 5, 6, and 14.

Thus, claims 5-12, 14, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3663

Conclusions

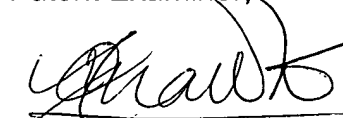
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan C To whose telephone number is (571) 272-6985. The examiner can normally be reached on from 8:00AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patent Examiner,

A handwritten signature in black ink, appearing to read 'Tuan C To', is written over a horizontal line.

Tuan C To

July 24, 2006